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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 617

WILLIE APPLEWHITE, ET AL., ETC.,
Petitioners,

vs.

WILLIAM M. JONES, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MAX R. NAIMAN,
EDMUND HATFIELD,
Attorneys for Petitioners.

THE BLAKELY-WARREN PRINTING COMPANY, CHICAGO

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Your petitioners, Willie Applewhite et al., plaintiffs-appellants below, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered on November 9, 1953 (R. 45), and the order denying a petition for rehearing therein, entered by said court on December 4, 1953. (R. 53.)

OPINION BELOW.

The opinion of the Court of Appeals for the Seventh Circuit, dated November 9, 1953, is reported at 207 F. 2d

701 (adv. sheets). It is set out in the transcript of proceedings. (R. 42-44.)

The District Court did not render an opinion.

JURISDICTION.

The jurisdiction of this Court is invoked under Title 28, U. S. Code, Section 1254 (1).

QUESTIONS PRESENTED.

1. Has the District Court, as enforcement court, the power to inquire into whether administrative orders were obtained by fraud?

2. Has the District Court, as enforcement court, the power to inquire into whether the actual use of the subject matter justifies the application to it of certain administrative orders?

3. Has the District Court, as enforcement court, the power to inquire into whether administrative orders are arbitrary and capricious?

4. If the District Court was correct in ruling that only the Emergency Court of Appeals had power to inquire into whether the pertinent administrative orders were fraudulent, then did the District Court err in refusing petitioners' request to hold this action in abeyance pending an appeal to the Emergency Court of Appeals?

STATUTES INVOLVED.

Title 50 App. U.S.C.A. § 1895 (Housing and Rent Acts: Act of June 30, 1947, c. 163, Title II, §205, 61 Stat. 199; Act of March 30, 1949, c. 42, Title II, §204, 63 Stat. 27; Act of July 31, 1951; 7:00 p.m. E.D.T., c. 275, Title II, §204, 65 Stat. 147).

Title 50 App. U.S.C.A. §§2107, 2108 (Defense Production Act Amendments of 1952: Act of June 30, 1952, c. 530, 66 Stat. 296).

STATEMENT.

This action was brought by 23 tenants to recover damages for rent overcharges. (R. 4.) The total claimed overcharges within the one year statute of limitations aggregate $9758.85. Petitioners seek judgment for three times this amount, plus costs and statutory attorney's fees. (R. 12-15.)

The premises are an apartment building in Chicago, Illinois, containing some 24 four-room apartments, each with private bath. These apartments were subject to maximum rent ceilings when respondents became the landlords in January, 1948.

In 1950 respondents are alleged to have rented out, without effecting any structural change, parts of these 24 apartments to some 59 different tenant families. It is claimed that no effort was made by respondents to create additional genuine self-contained family dwelling units, as defined by the rent control laws and regulations. These four-room apartments were rented one, two and three rooms to a tenant family, the several families having the privilege of sharing the bathroom in common. (R. 9.)

Respondents petitioned the area rent office to decontrol the premises on the ground that they had created additional self-contained family dwelling units. The blue prints submitted by respondents and other representations made by them in support of the petition were fraudulent, it is claimed. (R. 9-10.) Relying on these representations on May 11, 1950 the area rent office decontrolled the premises. (R. 10.)

Under color of the decontrol respondents typically

charged petitioners and other tenants $17.50 per week for 2 rooms—that is, a rate of $35.00 per week or approximately $150.00 per month for a 4 room apartment that until then had rented for $42.50 to $46.00 per month, with formerly much better services. (R. 10.)

A long series of protests extending over a year finally brought about revocation of the decontrol by the Area Rent Office on February 5, 1952. (R. 11.) When respondents sought to register the decontrolled rents as "first rentals", the Area Rent Office on April 25, 1952, reduced these, but made the orders prospective only. (R. 11.) A request for administrative review was in May, 1952 filed by petitioners (R. 11), but this had not been acted upon at the time the Office of Rent Stabilization terminated operations on July 31, 1953. (This last fact is not of record, but is respectfully suggested to the Court.)

On May 1, 1952 petitioners filed this statutory action for damages for rent overcharges. Of the one year period within the statute of limitations, only one week appears to be effected by the orders of April 25, 1952.

The District Court, on respondent's motions to dismiss, ruled that it had no power to go behind the face of the orders of decontrol and dismissed the action with prejudice. (R. 19, 20, 23, 24.)

The Court of Appeals affirmed this dismissal (R. 45) and denied rehearing. (R. 53.)

REASONS FOR GRANTING THE WRIT.

Preface: Despite the termination of federal rent control, the problems presented by this case are still of importance, both present and potential. Judicial review of administrative orders obtained by fraud, or without substantial supporting evidence, and judicial inquiry into the applicability of administrative orders to their purported

subject matter are continuing fundamental problems of administrative law, which are in this case exemplified with especial boldness and simplicity.

Fraudulent decontrol was a flagrant abuse in the later years of rent control, and the questions raised in the case at bar are assuredly involved in many actions still pending in the courts. In addition, determination of the proper method of inquiry into the fraudulent, arbitrary and capricious, and inapplicable and hypothetical character of administrative rent orders will have an important bearing on choice of the best methods of combating inflation in housing in the event of future national emergencies.

The problem is eminently practical. Tenants' suits for damages for rent overcharges have been subject to a statute of limitations restricting recovery to the very brief period of one year. Administrative appeals were often many months in process. Enforcement of a rent control program is severely handicapped if overcharged tenants must forego collection of damages for overcharges, a purely judicial matter, through their destruction by virtue of the operation of a statute of limitations, while the rent adjustment matter is pending on administrative appeal. This problem requires solution by this Court.

I.

The Decision of the Seventh Circuit in this Case Is in Conflict with Decisions of the Fourth, Fifth and Eighth Circuits.

The Court of Appeals for the Seventh Circuit herein adopted as its own the ruling of the trial court that it had no power "to go behind the face" of the orders of decontrol. (R. 23, 24, 42, 43.)

This is in direct conflict with the decisions of the Courts of Appeals for several other circuits.

The Fifth Circuit in *Bowles* v. *Griffin*, 151 F. 2d 458, 460, 461, also an action by a tenant for damages for rent overcharges, held that the issue as to whether a rent-fixing order was fraudulently procured, so that the landlord could not in good faith have relied upon it to protect himself against charges of violation of rent control regulations, was a matter for the courts and that the administrative agency could not by a finding determine it.

The Fourth Circuit in *Woods* v. *Macken*, 178 F. 2d 510, 512, 513, applied the actual use of the premises principle, which the Seventh Circuit here refused to countenance. In that case the premises consisted of an apartment of four rooms originally registered at a rental of $45 per month, and thereafter rented to one tenant at such amount. Subsequently the landlord altered these premises by changing them from one to two units, registering the front portion at $25 per month and the rear at $35 per month. The two separate apartments were then rented to two different tenants. Still later the landlord rented both units to a new single tenant at $60 per month, or the aggregate of the amounts of the two rent ceilings. The landlord defended an action for overcharges with the contention that the two subsequent registration statements had superseded the original registration statement. The District Court's sustaining of the landlord was reversed by the Fourth Circuit, which held that the registration statements merely informed the administrative agency of the status of the property. The case at bar is stronger than the *Macken* case in that there the landlord acted in good faith, whereas here respondents have not.

The Eighth Circuit also applied the actual use of the premises principle in *Landes* v. *Barrett*, 199 F. 2d 539,

holding that premises, susceptible of use both as single rooms and, together, as apartments, but registered only as single rooms, should have been re-registered when they were rented as apartments. It is true that in that case there was an administrative refund order, but the court utilized the actual use of the premises principle to toll the administrative statute of limitations of three months, holding valid refund orders entered in proceedings instituted six years after the filing of the single room registrations. In that case too the landlord acted in good faith, whereas here respondents have not.

II.

The Opinion of the Court of Appeals Herein Purports to Rest Upon this Court's Decisions in Yakus v. United States, 321 U. S. 414, and Bowles v. Willingham, 321 U. S. 503. But These Cases Do Not Support What the Court of Appeals Has Done.

In reaching its decision herein the Court of Appeals relied heavily, even emphatically, upon *Yakus* v. *United States*, 321 U. S. 414, and *Bowles* v. *Willingham*, 321 U. S. 503, as settled law to the effect that only the Emergency Court of Appeals has power to inquire into the validity of rent orders. It appears that the law has undergone changes more than once since those cases were decided under the 1942 rent control act, which expired on June 30, 1947.

During the period between July 1, 1947 and June 30, 1952 the Emergency Court of Appeals was deprived of its jurisdiction over rent orders generally, and was limited to the review of matters of broad applicability arising as a result of the action of local advisory boards and of the Director of Rent Stabilization. *Dargel* v. *Henderson*, Em. App., 200 F. 2d 564, 565; *Smith* v. *United States*, 1 Cir., 199 F. 2d 377, 381, 382, which states that during the 1947-

1952 period, the District Courts, as enforcement courts, had the power to inquire into the validity of rent orders.

After July 1, 1952 the power of the Emergency Court of Appeals to review rent orders generally was restored to it by the Defense Production Act Amendments of 1952. But the *Dargel* opinion limits the jurisdiction of the Emergency Court of Appeals over rent orders generally to "all regulations and orders which were in force after June 30, 1952." (At 566.)

In the case at bar the orders of decontrol attacked were entered in May, 1950 (R. 10) and were revoked in February, 1952. (R. 11.) Thus they belong to the period in which the Emergency Court of Appeals, according to its own decision, had been shorn of its jurisdiction over them. The *Yakus* and *Willingham* cases, relied on by the Court of Appeals in its opinion below, are therefore not here applicable.

The other cases cited in the opinion—*Woods* v. *Stone*, 333 U. S. 472; *Bozarjian* v. *Woods*, 175 F. 2d 483; *Woods* v. *Bobbitt*, 165 F. 2d 673; *Roupp* v. *Woods*, 176 F. 2d 544; and *Woods* v. *Kaye*, 175 F. 2d 886—were also decided under the 1942 Act and are equally inapplicable.

III.

The Decision of the Court of Appeals Embodies a Mechanical Application of the Principle of Exhaustion of Administrative Remedies, Which Should Be Corrected by this Court.

The cases concerning exhaustion of administrative remedies cited by the Court of Appeals in its opinion—*Gates* v. *Woods*, 169 F. 2d 440; *Koster* v. *Turchi*, 173 F. 2d 605; *Smith* v. *Duldner*, 175 F. 2d 629; *Woods* v. *Durr*, 176 F. 2d 273; *May* v. *Maurer*, 185 F. 2d 475; *Feeley* v. *Woods*, 190 F.

2d 228, 233, 234; *Osmond* v. *Riverdale Manor,* 199 F. 2d 75—were equity proceedings to which the discretionary equity rule of exhaustion of administrative remedies applied.

As noted in *Smith* v. *United States,* 1 Cir., 199 F. 2d 377, 381, this is not applicable to a suit for damages for rent overcharges, which is an action at law.

United States v. *Sharp,* 188 F. 2d 311; *United States* v. *Carter,* 197 F. 2d 903; and *United States* v. *Jacovetty,* 204 F. 2d 154, also cited in the opinion below, were, it is true, actions for damages for rent overcharges, but in these one of the parties sought to question the mere correctness of the administrative orders, whereas here the administrative orders are attacked not as merely erroneous, but as vitiated by fraud. (The language concerning the matter in *Chatoine Hotel Apts.* v. *Shogren,* 204 F. 2d 256 (also cited in the opinion below), appears to have been *obiter dicta* in that dismissal of an action against a subordinate administrative official for failure to join the Director of Rent Stabilization as an indispensable party.)

CONCLUSION.

For the foregoing reasons it is respectfully urged that a Writ of Certiorari be granted.

MAX R. NAIMAN,
EDMUND HATFIELD,
Attorneys for Petitioners.

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PETITIONERS' MOTION FOR LEAVE TO DISPENSE WITH PRINTING OF THE RECORD.

MAX R. NAIMAN,
EDMUND HATFIELD,
Attorneys for Petitioners.

THE SOUTHWOOD-HARRIS PRINTING COMPANY, CHICAGO

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PETITIONERS' MOTION FOR LEAVE TO DISPENSE WITH PRINTING OF THE RECORD.

Now come petitioners, by their attorneys, Max R. Naiman and Edmund Hatfield, and move that an order be entered by the Court granting petitioners leave to dispense with the printing of the record.

In support of which motion an affidavit is attached hereto.

MAX R. NAIMAN,
EDMUND HATFIELD,
Attorneys for Petitioners.

SUPPORTING AFFIDAVIT.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

EDMUND HATFIELD, being duly sworn, deposes and says that he is an attorney at law duly admitted to and a member of the bar of this Court and that he is one of the attorneys for petitioners herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, and he further states:

(a) Petitioners are working people with modest incomes, which have been drained by the high rents which respondents have required them to pay for living quarters;

(b) On a representation similar to this, the Court of Appeals for the Seventh Circuit did on August 17, 1953, in an order entered by Chief Judge Major, grant petitioners leave to dispense with the printing of the record in that court;

(c) For the same reason, the Court of Appeals for the Seventh Circuit did on December 8, 1953, in an order entered by Circuit Judge Lindley, direct the clerk of that court to certify and transmit to this Court the original transcript of record from the District Court, for use in connection with this petition for writ of certiorari;

(d) This Court will not be inconvenienced by the granting of this motion, for the reason that this petition concerns only matters of law arising on the face of the pleadings, the trial order entered by the trial court, and the decision of the Court of Appeals.

Deponent knows of his own knowledge the circumstances

set forth in this affidavit and says that the statements contained herein are true in substance and in fact.

.....

Subscribed and sworn to before me this second day of March, 1954.

.....

Notary Public.